

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES

Call to Order: By **CHAIRMAN EDITH CLARK**, on February 17, 2003 at 8:05 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Edith Clark, Chairman (R)
Sen. John Cobb, Vice Chairman (R)
Rep. Dick Haines (R)
Rep. Joey Jayne (D)
Sen. Bob Keenan (R)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Robert V. Andersen, OBPP
Pat Gervais, Legislative Branch
Lois Steinbeck, Legislative Branch
Sydney Taber, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp refers to material below it.

Committee Business Summary:

Hearing & Date Posted: DSD
Executive Action: HB 481
Director's Office - Refinance Unit
MTAP

{Tape: 1; Side: A; Approx. Time Counter: 1.1 - 11.8}

CHAIRMAN CLARK advised the public that the Subcommittee would be deferring action on HB 481 until later.

IGT Transaction Fee and Refinancing Language in HB 2

Chuck Hunter, Refinancing Unit, distributed a spreadsheet with data on a one percent transaction fee on intergovernmental transfers (IGT). If the Department were to impose a transaction fee, it would bring in about \$75,514. In discussion with John Chappuis, Deputy Director of the Department of Public Health and Humans Services (DPHHS), they had concluded that the transaction fee should be done on the county funds. If it were done on the grossed-up amount, there would be a problem because it does not represent a medical payment and this is what they must have once the dollars are matched with federal money.

EXHIBIT (jhh35a01)

EXHIBIT (jhh35a02)

In discussion with **Ms. Steinbeck** regarding assessment of the fee on the grossed-up or nongrossed-up amount, **Mr. Chappuis** said that it would be a much larger reduction to the counties if they were to pull the grossed-up amount out of the nongrossed-up amount.

Ms. Steinbeck said that the State determines the amount it will return to the counties. If it were to keep one percent of the grossed-up amount back, she does not understand why the total amount must return to the counties. **Mr. Chappuis** reiterated that if it is taken after it is grossed up, they would be diverting the benefit that should go to the counties, and it has no relationship to any service that would be applied out there. He suggested that if they were to do this, they would be at risk of breaking federal regulation.

Mr. Hunter said that if they look at the \$2 million that is going to the Mental Health Program (MHP) from the county IGT and take money off the top before it is grossed-up, they retain enough of the county funds to gross up to \$2 million. **Ms. Steinbeck** remarked that they had diverted \$2 million as match and grossed it up in MHP in the previous biennium. **Mr. Chappuis** agreed that \$2 million came off the top and went for services in mental health where it was grossed up to become a much larger amount. If they were to take one percent from the counties on their payment and match it for administration or some other benefit, that would be okay because it is going to services or administration. After it is matched up to the county and taken, it is inappropriate if it is not tied to an expense.

Gail Gray, Director of DPHHS, and Mr. Chappuis both stressed that the Governor was committed that the Department may keep only those costs associated with administration of the tax on the hospital tax bill.

{Tape: 1; Side: A; Approx. Time Counter: 13.1 - 25.2}

Ms. Steinbeck continued that the Subcommittee would need a bill if they wanted the Department to free up general fund only. If they want to give them flexibility, they need to indicate intent in the appropriations act. If there is no bill and they receive additional federal funds, they must reduce general fund.

Ms. Gervais said that this is complicated by the fact that there are some refinancing proposals which are already concrete. DSD has already talked to the federal government about changing waiver definitions for children's services and moving the children who are receiving family education and support services into the waiver. At this point, there are verbal assurances and a waiver amendment due in March would allow implementation of this by July. They are dealing with things that can be estimated while others are questionable or difficult to determine. They may wish to appropriate the savings that are relatively firm estimates, and look at language that would handle things which are difficult to estimate, but may come to pass in the biennium.

{Tape: 1; Side: A; Approx. Time Counter: 25.2 - 34}

SEN. STONINGTON said that she is uncomfortable putting something like this in statute, since statute is intended to handle things over time. When they get down to the specifics of refinancing projects, it does not seem appropriate that this should go in statute. **Director Gray** said that the Department will honor the intent of the Subcommittee, but would not like too much of this in statute since so much is still unknown. The Department preference would be for intent language in the bill. She reiterated that they would abide by Subcommittee intent. **Ms. Steinbeck** suggested that they could put intent language in the narrative that accompanies HB 2.

Mr. Chappuis concurred that they will do their best to abide by the intent, but he would like it written down. If it is inappropriate in the bill, then he would like it in the narrative so that it is explicit as to what they are supposed to do. After continued explanation and discussion, **Ms. Steinbeck** stated that they must spend all nongeneral fund first. If the Subcommittee wants the Department to be able keep the general fund for refinancing, there needs to be a statutory change. **SEN. COBB** said that they need a generic statute which would allow them to expend nongeneral fund and not increase the general fund.

{Tape: 1; Side: A; Approx. Time Counter: 34 - 37}

Ms. Gervais stated that, if there is additional federal revenue, recognized statute provides for a reduction in the general fund and an increase in federal authority. Because the Subcommittee included additional federal authority in HB 2 last session and included language in HB 2 which allowed the Department to do certain things, that portion of law became ineffective for this situation. The language in HB 2 last session was not challenged so it is unclear whether or not it could have been construed as an implied amendment to statute. Because the Department had additional authority and did not have to request a budget amendment, the trigger in statute requiring the general fund reduction did not occur.

{Tape: 1; Side: A; Approx. Time Counter: 37 - 42.2}

SEN. STONINGTON suggested that a statute which would authorize a refinancing effort and allow the retention of general fund may be a good idea. **REP. JAYNE** requested where in code the statute about which they were talking would be found. **Ms. Steinbeck** said that it is 17-2-108 on B14 of the Budget Analysis.

{Tape: 1; Side: A; Approx. Time Counter: 42.2 - 46.2}

Ms. Steinbeck reviewed the policy issues on which LFD staff would like direction with regard to Subcommittee wishes should there be extra general fund due to the refinance effort.

{Tape: 1; Side: A; Approx. Time Counter: 46.2 - 49.8}

SEN. STONINGTON said that it sounds like they must change the statute, and then use the narrative as a means of describing the uses for general fund which the Subcommittee would authorize, such as cost overruns in caseloads. **SEN. COBB** proposed that the first use of the refinance money should be to fund the refinance unit, next cost overruns, and then to reinstate services, subject to approval by the Budget Office.

{Tape: 1; Side: B; Approx. Time Counter: 0.8 - 2.1}

Ms. Gervais suggested that one way to address this would be to amend the appropriation statute which recognizes that HB 2 might provide provisions. **REP. JAYNE** asked if they were considering amending 7-17-208, and **Ms. Steinbeck** said that it seems appropriate.

Discussion on Propriety of Inserting Language in HB 2

{Tape: 1; Side: B; Approx. Time Counter: 2.1 - 6.4}

There followed a discussion on the propriety of inserting language in HB 2. **SEN. STONINGTON** mentioned a discussion in Senate Finance with regard to the use of HB 2 and language to

describe things. The effect has been to broaden HB 2. She suggested that it would be more appropriate to change statute to say 'in the cases where refinancing has been done to bring down more federal money, this is what could be done', and in the narrative, bind the two together somehow. Her intent would be to limit the ability of HB 2 to go any which direction it wants.

Ms. Steinbeck pointed out that the suggested language did leave much discretion up to the Office of Budget and Program Planning (OBPP) with regard to what would be funded. She said that the Subcommittee needs to decide whether they want to establish priorities for refinance money; whether it should revert to general fund; or whether they want to delegate the decision-making authority to the OBPP. **SEN. COBB** observed that sometimes the Department has been allowed much discretion other times not, depending on circumstances. They need to give some discretion, but also restrict how it can be used.

{Tape: 1; Side: B; Approx. Time Counter: 7 - 9.7}

Director Gray expressed confusion over why this situation is any different than when dealing with the Families Achieving Independence in Montana (FAIM) II R proposal two years ago. The Department was told that if it did not have enough money, it had to cut out a pro rata share. This seems to be going in the opposite direction. **Ms. Steinbeck** inserted that the reason it is different, is that FAIM II R was federal money. There is a statute specifically controlling excess general fund. **Director Gray** responded that the language says that general fund savings, generated through this, be applied. **Ms. Steinbeck** replied that statute says that if you get additional federal funds for an activity for which there is general fund that you will spend federal funds first. It requires the OBPP to adjust the appropriation by reducing general fund and increasing federal funds. The language is an implied amendment to that statute, which is inappropriate for HB 2. The worst-case scenario is that all of HB 2 could be thrown out as a result.

{Tape: 1; Side: B; Approx. Time Counter: 9.7 - 12}

SEN. STONINGTON said that she would offer a motion for the purposes of discussion.

EXECUTIVE ACTION ON REFINANCING LANGUAGE

Motion: **SEN. STONINGTON** moved A SUBCOMMITTEE BILL TO AUTHORIZE THE USE OF GENERAL FUND THROUGH REFINANCING EFFORTS AS INDICATED IN HB 2.

Discussion:

SEN. STONINGTON expressed concern about allowing too broad a statutory authority. Her goal is to amend 17-2-208 which limits the use of general fund when a refinancing effort is successful.

{Tape: 1; Side: B; Approx. Time Counter: 12 - 17}

Bob Andersen, OBPP, reviewed past refinancing efforts of the Department, mentioning initiatives taken by Mike Billings, Administrator of Operations and Technology Division(OTD). He said that some of the language which has been included was to give them the extra strength to ensure that there was a stop between the decision and execution of an action. He expressed concerns that in the interest of trying to define fairly detailed guidelines on where they want money to go, they may make a decision now that they would regret later. He affirmed that OBPP will try to follow the wishes of the legislature, but asked that they not constrain the ability of the Department to do constructive things.

{Tape: 1; Side: B; Approx. Time Counter: 17 - 20.9}

Mr. Chappuis asked how it would work with regard to situations such as the one they had with the Health Insurance Portability and Accountability Act (HIPAA). There was a federal mandate for which they had no appropriation, but they did have money in the MMIS and TEAMS contracts and used that for this. Some of it was general fund, but it was used and they received more federal funds. He asked how situations like that would fall into this.

Ms. Steinbeck responded that this is a different situation because the Subcommittee has directed the Department to use open-ended federal funding streams to actively identify general fund spending and minimize it. It is different than day-to-day management of things which happen on the margin. The legislature always expects the Department to be efficient, and perhaps audit functions or oversight functions have not been adequate to actively enforce 17-7-208. She further added that the Subcommittee is the policy-making body, and it is its prerogative to tell the executive branch how to spend the funds.

{Tape: 1; Side: B; Approx. Time Counter: 20.9 - 26.}

REP. HAINES commented that if refinancing produces, say \$15 million, and if they put it in a bill, he would have to question whether something in this Department should have the highest priority versus education or some other department. If they walk out of there and HB 2 becomes law, in theory, they have financed everything they want to finance. If they have not and they think that there is some money that will come out of refinancing, then maybe they should anticipate up to a certain amount and specify

those amounts that would go into certain types of programs, with the remainder reverting. He expressed his concern that they may leave the Department to spend unknown refinance gains. He added that given all of this, he would hope that even if they could not have all the refinance money, they would still work like the dickens to find it.

{Tape: 1; Side: B; Approx. Time Counter: 26 - 26.5}

Vote: Motion carried 6-0 on a voice vote.

EXECUTIVE ACTION ON HB 481

EXHIBIT (jhh35a03)

{Tape: 1; Side: B; Approx. Time Counter: 32 - 48.9}

Motion: SEN. STONINGTON moved TO RECOMMEND DO PASS OF HB 481.

Discussion:

CHAIRMAN CLARK said that there has been a lot of discussion and negotiation on this bill by certain parties, and she asked that they enlighten the Subcommittee as to their agreement. **Bob Olsen, Montana Hospital Association (MHA)**, explained that the issue that had been raised by Shodair was the question of whether or not its residential treatment center, which is a distinct part of the hospital, is covered by or not covered by the provider assessment. The issue is not one that is disputed; MHA believes that the term "hospitals" as it exists in the bill includes distinct part units, such as psychiatric units and rehabilitation units. They would agree that if the federal government determined it to be true, it would include the residential treatment center(RTC)at Shodair. Shodair's RTC is a unique circumstance because it is a hospital. The amendment to which they have agreed leaves the word "hospital" alone and does not add language as requested by Shodair to specify its RTC since that would be redundant. If there is no definitive response from the federal government as to whether the RTC is included, the bill has been designed to ensure that if it is included, the rest of the bill will not fall apart. The word "acute" has been stricken in the title and in Section one, and the numbers have been fixed in the state special revenue (SSR) to reflect the assessment that Shodair would pay on its RTC. The last part of the amendment is the contingent voidness language should the federal government say no.

EXHIBIT (jhh35a04)

Mr. Olsen continued that Shodair has been concerned that not adding the language "residential treatment center" to the

hospital assessment bill raises the concern that the issue will melt away and not remain in front of them. He said that he had agreed to write a letter to Mr. Casey which says that MHA understands the interpretation that Shodair has from its lawyer that it is included under the assessment, and that MHA does not dispute that interpretation. Mr. Olsen submitted that letter into the public record.

EXHIBIT (jhh35a05)

{Tape: 1; Side: B; Approx. Time Counter: 40 - 44.5}

Mona Jamison, Shodair Hospital, said that Mr. Olsen's explanation of what transpired is accurate. She stressed the importance of the letter submitted by Mr. Olsen, and its inclusion in the minutes. **Ms. Jamison** stated that the last thing that Shodair would want to do is disrupt the great potential for refinancing under the hospitals. She added further that Shodair firmly believes that it is included in HB 481. She said that it is critical from a legal standpoint that the minutes reflect that the letter has been introduced and is part of the public record. When they had the hearing on this several days ago, three-quarters of that hearing pertained to the inclusion or exclusion of Shodair from the definition. If the amendments do not make the specific issue clear, it would suggest to an attorney that if amendments were not adopted, Shodair was not included. If Shodair is correct that it is included in the bill, then it can adopt Mr. Olsen's position that no changes are needed to the statute. She expressed her appreciation of Mr. Olsen's statement, and requested again that the letter and his comments be made part of the public record.

{Tape: 1; Side: B; Approx. Time Counter: 44.5 - 49.5}

{Tape: 2; Side: A; Approx. Time Counter: 0.4 - 0.8}

REP. JAYNE asked Ms. Jamison if everything that she wants is in the language of the bill in a sufficient manner so that it is understood by the court and everyone else. **Ms. Jamison** said that she believes it is. Mr. Olsen had pointed out that, in the amendment, the word "acute" is being stricken. This helps make it clear. The other point is that if the statute is not perfectly clear or by a preponderance clear, the minutes and legislative history behind a bill can be pulled up and offered to a decision maker or court as the intent of the legislation. They would be precluded from doing this if the language of any statute is clear from the mere words. **Ms. Jamison** further stated that the change in the numbers in the amendments reflects that Shodair is included.

{Tape: 2; Side: A; Approx. Time Counter: 0.8 - 2.8}

SEN. STONINGTON said that she had heard that if Shodair were included in HB 481, there may be even more money generated by Shodair than by hospitals because of the tax on provider reimbursement. **Mr. Olsen** said that if Shodair is assessed and its assessment were to be redistributed to hospitals, then they would have more money than estimates would suggest they could spend on hospital care. They have agreed that the Shodair assessment will go back into the mental health program. It will not affect the hospitals, so they did not change the tax rate in the bill. When Shodair's assessment comes in, those SSR dollars will go to the mental health program to the degree that they compensate Shodair. If there is residual SSR, then the Mental Health Division will receive the rest. **SEN. STONINGTON** said that she calculates roughly \$2.7 million to be incorporated into the mental health program. **Mr. Olsen** said depending on what they do with children's mental health this would be true. If they move children's mental health program into a new division, then they would expect the SSR to go there, too.

{Tape: 2; Side: A; Approx. Time Counter: 2.8 - 4.3}

SEN. COBB asked where in the bill it says it goes to children's mental health, and **Mr. Olsen** responded that the bill does not deal with appropriations. **SEN. COBB** asked how they would get the money into an SSR without an appropriation. Referring to the amendments, he said that they are missing a line for federal funds. **Ms. Steinbeck** suggested that when the Subcommittee considers the amendments, it could direct LFD staff to include the appropriate amount of federal funds in the amendment.

{Tape: 2; Side: A; Approx. Time Counter: 4.3 - 9.8}

SEN. STONINGTON asked how they would budget this type of money, and **Ms. Steinbeck** said that it depends on how specific they want to be in directing refinancing money. The statutory language and concepts prepared by Mr. Hunter are very broad and delegate much to the executive. If the Subcommittee wants to specify where extra money should go, this should be put in statute. **REP. JAYNE** commented that they are perhaps being a bit premature in this. If they want to put money in a specific area, she suggested that they might amend the bill itself to specify where money should go. **SEN. STONINGTON** added that this would not be a bad idea, they could amend it with contingent language which would say that funds above amounts that hospitals can be reimbursed would be directed as they wish. **Ms. Steinbeck** said that they could include language in the bill which says that, if there are funds above the upper payment limit (UPL) for hospitals, the SSR which would have been used to draw down the funds must be appropriated in children's mental health.

{Tape: 2; Side: A; Approx. Time Counter: 9.8 - 11.2}

Motion/Vote: SEN. STONINGTON moved THE AMENDMENTS TO HB 481 WITH AN ADDITIONAL AMENDMENT REFLECTING CHANGES TO LINE 11 OF THE BILL ON PAGE 6. Motion carried 6-0 on a voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 11.2 - 12}

Ms. Steinbeck distributed a technical amendment changing a reference from "quarter" to "annual" because the tax is paid annually, yet fees or late penalties are supposed to be assessed quarterly in the bill. This would allow the reporting periods to match up.

EXHIBIT(jhh35a06)

{Tape: 2; Side: A; Approx. Time Counter: 12 - 12.6}

Motion/Vote: SEN. COBB moved TO ADOPT THE AMENDMENT. Motion carried 6-0.

{Tape: 2; Side: A; Approx. Time Counter: 12.6 - 13}

Ms. Steinbeck distributed an amendment requested by the Governor which states that the hospital may not place a fee in this part on a patient's bill and includes whereas statements.

EXHIBIT(jhh35a07)

{Tape: 2; Side: A; Approx. Time Counter: 13 - 14.2}

Motion/Vote: SEN. COBB moved THE AMENDMENT. Motion carried 5-1 with SEN. KEENAN voting no on a voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 14.2 - 15.3}

Ms. Steinbeck said that the final amendment was requested by DPHHS and would allow administrative activities associated with this bill to be collected from the fee - about \$30,000.

EXHIBIT(jhh35a08)

{Tape: 2; Side: A; Approx. Time Counter: 15.3 - 16.6}

Motion/Vote: SEN. COBB moved AMENDMENT 48104.ASB. Motion carried 6-0 on a voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 16.6 - 21.2}

Motion: SEN. STONINGTON moved A CONCEPTUAL AMENDMENT WHICH WOULD AMEND THE BILL TO INDICATE THAT FUNDS IN EXCESS OF UPPER PAYMENT LIMIT(UPL) FOR HOSPITALS BE DIRECTED TO CHILDREN'S MENTAL HEALTH SERVICES TO OFFSET MONEY CURRENTLY APPROPRIATED FOR CHILDREN'S MENTAL HEALTH SERVICES.

Discussion:

Ms. Steinbeck said that it would not offset because there is an appropriation in here. It should direct that the amounts appropriated above the UPL for hospitals as a class be expended in children's mental health services.

Mr. Hunter said that the bill had been carefully crafted to follow the provider tax rate. If they wish to divert the money, the Subcommittee should include in the amendment that money that was diverted to pay for things in the mental health system under an approved state Medicaid plan. This will assure the federal government that the money going away may have a federal Medicaid match which is made up here.

{Tape: 2; Side: A; Approx. Time Counter: 21.2 - 21.4}

Substitute Motion: SEN. STONINGTON made a substitute motion TO INDICATE THAT FUNDS IN EXCESS OF UPPER PAYMENT LIMIT(UPL) FOR HOSPITALS BE DIRECTED TO CHILDREN'S MENTAL HEALTH SERVICES TO OFFSET MONEY CURRENTLY APPROPRIATED FOR CHILDREN'S MENTAL HEALTH SERVICES AND INCLUDE THAT ANY MONEY BE USED UNDER AN APPROVED MEDICAID PAYMENT.

{Tape: 2; Side: A; Approx. Time Counter: 21.4 - 24.5}

Mr. Olsen directed the Subcommittee to Section 2, Subsection 2 of the bill (Exhibit 3) where it states that all proceeds from utilization fees must be deposited in an SSR for purposes of providing Medicaid payments to hospitals. A conceptual amendment could be added there, to say that once the UPL had been met they could use the funds for other Medicaid programs. If they do not put the amendment here, it may conflict with this provision of the law. Furthermore, the way the bill is structured and the numbers created, they do not expect that there would be any excess revenue on the hospitals. If Shodair had residential treatment funds on deposit in excess of their costs, those are the dollars that Mental Health Services (MHS) would be expected to deploy in the mental health system. There is a sunset clause in the bill so that it could be reexamined in two years.

{Tape: 2; Side: A; Approx. Time Counter: 24.5 - 25.4}

REP. JAYNE suggested that they could make the amendment to clarify Section 2, Subsection 2, and still go with it because there may be extra funds in there.

{Tape: 2; Side: A; Approx. Time Counter: 25.4 - 26.3}

Vote: Motion carried 6-0 on a voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 26.3 - 26.5}

Motion/Vote: SEN. COBB moved RECOMMEND DO PASS ON HB 481 AS AMENDED. Motion carried 6-0 on a voice vote.

CHAIRMAN CLARK said that it would now go to the full appropriation committee with the recommendations of the Subcommittee.

EXECUTIVE ACTION ON REFINANCING UNIT

{Tape: 2; Side: A; Approx. Time Counter: 26.5 - 29.7}

Ms. Steinbeck explained that the full-time equivalents (FTE) to continue the Refinancing Unit were not included in the Executive Budget. The Subcommittee has already approved federal authority for refinancing and moved it to the Director's Office. The FTE could be funded from there.

{Tape: 2; Side: A; Approx. Time Counter: 29.7 - 31.6}

Responding to a question from **REP. JAYNE** regarding the amount of money that they are discussing, **Mr. Hunter** said that it would be \$730,000 over the biennium, 50 percent of this would be federal, the rest would be general fund. **Ms. Steinbeck** added that the Subcommittee would not appropriate the general fund, but that the unit would have to earn it through refinancing. The federal funds have already been appropriated through their action, and they could put the authorization to fund five FTE with that.

{Tape: 2; Side: A; Approx. Time Counter: 31.6 - 35.6}

Responding to questions from **REP. HAINES** regarding the FTE and one-time-only status, **Mr. Hunter** said that they expect the unit to be a short-term unit which works itself out of a job in two years. The FTE are individuals from other parts of the DPHHS organization. **Mr. Hunter** added that the individuals chosen for the refinance job are some of the most knowledgeable and skilled individuals in their respective areas. The Department anticipates no difficulty in moving those individuals back into other positions. Some of the individuals are guaranteed to return to their original position if the Refinance Unit is not reinstated for the next biennium. If they go to the next biennium, these individuals will probably have to do a new contract, and there will probably be no guarantee. **Mr. Chappuis** inserted that, because of the vacancy savings built into the budget, between 120 and 150 positions will be held vacant. At that point, these individuals have been guaranteed to go back into their respective positions.

{Tape: 2; Side: A; Approx. Time Counter: 35.6 - 42.6}

Ms. Steinbeck observed that she believes that there will be continuing work for the Refinancing Unit given the way federal regulations change. It will be an ongoing challenge to stay on top of changing regulations in order to maximize the use of general fund. Other states have had refinancing units which have continued to pay for themselves for many years. **Bob Andersen, Office of Budget and Program Planning**, cautioned that they do not want to start things forever. In two years, they will be able to determine whether they will need to continue the FTE. He said that perhaps they should have a refinancing culture within divisions where people are continuing to look for means to refinance. **Ms. Steinbeck** said the Refinancing Unit was created because employees in divisions were literally too busy with other priorities that there was no one with the time to spend researching this.

Director Gray stated that the one-time-only was appropriate on this because they do not know what is going to happen in two years. The ability to concentrate on this with one unit has caused them to be able to potentially collect a great deal of money which will benefit everyone.

{Tape: 2; Side: A; Approx. Time Counter: 43.2 - 46}

Motion/Vote: SEN. STONINGTON moved TO AUTHORIZE INCLUSION OF LANGUAGE IN DP 113 TO ADD FIVE FTE SLOTS WITHIN THE FEDERAL FUNDING AS A ONE-TIME-ONLY. Motion carried 6-0 on a voice vote. REP. HAINES voted SEN. KEENAN's proxy.

EXECUTIVE ACTION ON MTAP

{Tape: 2; Side: B; Approx. Time Counter: 0.3 - 3.6}

Ms. Steinbeck reviewed previous discussion on the Montana Telecommunications Access Program(MTAP), and the Subcommittee's decision to go with **REP. JACOBSON's** bill which establishes eligibility at 400 percent of poverty and eliminates collection of fees. The School for Deaf and Blind will be funded or fundable within 250 percent of poverty through the bill. **SEN. STONINGTON** said that money going to the School for the Deaf and Blind preserved will take an additional \$57,000 out of the MTAP ending fund balance. She asked that the Subcommittee move first so that she can take its position to the Energy Committee, which is also acting on MTAP.

{Tape: 2; Side: B; Approx. Time Counter: 3.6 - 6.4}

Ms. Steinbeck suggested that they could choose to structure the appropriation so that it restricts appropriations for that use and anything that is not spent would be required to revert. This

would obligate funds coming out of the SSR and ensure that unspent balances would go back in to maintain an ending fund balance.

Ms. Steinbeck reviewed DP 31 which is a request for MTAP program increases one-time-only. She said that there is an LFD issue with this in that given historic changes in relay processes, the Executive Budget may be too low by about \$104,000. **SEN.**

STONINGTON said that the decision package does not reflect their recommendation that equipment expenditures be limited to 250 percent of poverty; the numbers need to be adjusted accordingly.

Ms. Steinbeck said that equipment purchases could affect relay services if there is not as much equipment being distributed so people do not use the relay services. The Federal Communications Corporation (FCC) requires states to fund the relay part of this.

{Tape: 2; Side: B; Approx. Time Counter: 6.4 - 10}

Continuing the discussion, **SEN. STONINGTON** indicated that she has a problem with any of the money going to the School for the Deaf and Blind. This program was designed to fund relay services and equipment for the hearing impaired, and the statutory language makes no reference to the School for the Deaf and Blind being an appropriate use for the money. Language does indicate that in order to use any of the money for equipment, there must be a percentage of poverty qualification, and there is no indication that the School for the Deaf and Blind did any of this. She expressed her concern that, due to the ending fund balance, funds were being diverted for a program not mentioned in statute, while they will be limiting the number of people for whom equipment should be provided. If they are worried about the ending fund balance, they should take out the School for the Deaf and Blind first, and then limit the number of people qualified for equipment.

Kryss Kuntz, Administrator of MTAP, distributed a sheet reflecting the ending fund balance as of 2005 and an appropriation for the School for the Deaf and Blind.

EXHIBIT (jhh35a09)

{Tape: 2; Side: B; Approx. Time Counter: 10 - 14.5}

In continued discussion of the ending fund balance, poverty percentages, and the School for the Deaf and Blind with regard to the MTAP issue, **SEN. STONINGTON** suggested that if they are concerned about the ending fund balance, they should leave the percentage of poverty at 250 percent. If they are not concerned about the ending fund balance, they should leave the percentage of poverty at 400 percent and fund the School for the Deaf and Blind. **CHAIRMAN CLARK** said that she would be reluctant to leave

it at 400 percent of poverty, and they had informally agreed that it needs to be moved down. **REP. HAINES** added that with or without the funding for the School for the Deaf and Blind, he has a problem with the percentage being left at 400, since it is an aberration compared to the other places where there are restrictions on the level of poverty.

{Tape: 2; Side: B; Approx. Time Counter: 14.5 - 18.4}

REP. JAYNE asked if they had not already voted to bring the percentage down to 200 percent. **CHAIRMAN CLARK** said that the Subcommittee had allowed that bill to die. **Ms. Steinbeck** clarified that it is statute which allows 400 percent, and HB 266 does not change this. **SEN. STONINGTON** said that **REP. JACOBSON's** bill does remove the funding for the School for the Deaf and Blind. She asked **CHAIRMAN CLARK** if she felt that it would be okay to reinstate funding for the School for the Deaf and Blind and have the bill reduce the poverty levels to 250 percent or should the bill pass as is. **CHAIRMAN CLARK** said that they should look at the ending fund balance, but part of the deal was that the School for the Deaf and Blind should be left out of it, and they would take it down to 200 percent of poverty.

Mr. Andersen observed that the School for the Deaf and Blind had been moved to Section A, and **SEN. STONINGTON** said that it was continuing to be funded under Section A. She said if the bill passes, it takes it out of there.

{Tape: 2; Side: B; Approx. Time Counter: 18.4 - 24}

Ms. Kuntz reviewed Exhibit 9 for the Subcommittee. She said that if the Subcommittee were to reduce eligibility to 250 percent of poverty it would add \$96,000 to the budget with an approximate end balance of \$247,000. **Ms. Kuntz** pointed out that LFD staff has said that they may be \$104,000 too low in their estimates, so that may offset the \$96,000 reduction in equipment. She said that she agrees that she may have made too low a projection on this.

{Tape: 2; Side: B; Approx. Time Counter: 24.5 - 30.7}

A lengthy discussion of the issues involved in MTAP ensued.

{Tape: 2; Side: B; Approx. Time Counter: 30.4 - 43.7}

Motion: **SEN. COBB** moved TO ADOPT DP 31 INCLUDING \$454,378 SSR OVER THE BIENNIUM, AS ONE-TIME-ONLY.

Discussion:

Director Gray said that since the relay system is an ongoing expense, it does not make sense to have it as a one-time-only

(OTO). **Ms. Steinbeck** said that the OTO is at the executive request. **Mr. Andersen** said that the reason they made this an OTO is that the ending fund balance is always decreasing. It is time to put in place measures that make it long term. **SEN. STONINGTON** reiterated that it is inappropriate for the School for the Deaf and Blind to drive this ending fund balance into deficit. **Director Gray** said that she does believe that moving the percentage of poverty down to 250 removes some of the problems to Department opposition.

There was an implied withdrawal of the previous motion.

{Tape: 2; Side: B; Approx. Time Counter: 43.7 - 47.5}

Motion: **SEN. COBB** moved TO ADOPT DP 31, EXPENDING \$454,378 SSR OVER THE BIENNIUM.

Discussion:

Responding to a question from **REP. HAINES**, **Ms. Steinbeck** said that General Government had appropriated \$56,995 from the MTAP SSR for the School for the Deaf and Blind.

{Tape: 2; Side: B; Approx. Time Counter: 47.5 - 48.5}

Vote: Motion carried 4-2 on a voice vote with **REP. HAINES** and **SEN. KEENAN** voting no. **REP. HAINES** voted **SEN. KEENAN's** proxy.

{Tape: 3; Side: A; Approx. Time Counter: 0.4 - 5}

Ms. Steinbeck continued the MTAP discussion with a brief review of DP 29, the video relay service funding. She also mentioned an LFD issue regarding how the program decides what equipment to fund. Responding to questions from **SEN. STONINGTON**, **Ms. Kuntz** said that those who apply and qualify for MTAP receive only one piece of equipment. They are meeting statutory guidelines by providing someone with a text telephone. With regard to the video relay service, they would be need to buy a computer or camera to install, but it does not fall into the American Disabilities Act (ADA) or the statutory guidelines. If they meet the requirement in statute with provision of a text telephone, the FCC may say that they have to provide video relay service at such a cost, but it would be the individual's additional cost.

{Tape: 3; Side: A; Approx. Time Counter: 5.4 - 6.9}

SEN. COBB asked why they would need to give them this funding, and **Ms. Kuntz** said that it has to do with federal guidelines. If the FCC says that they must provide the services to come up with functional equivalencies, then the state must provide this through relay services, but not necessarily through the equipment portion of statute.

{Tape: 3; Side: A; Approx. Time Counter: 7.7 - 8}

Motion/Vote: SEN. COBB moved TO ACCEPT DP 29 AS ONE-TIME-ONLY.

Motion carried 6-0 on a voice vote. REP. HAINES voted SEN.

KEENAN's proxy.

Discussion on Disability Services Division and Eastmont Closure

{Tape: 3; Side: A; Approx. Time Counter: 10 - 13.7}

Ms. Gervais distributed a handout from the Montana Advocacy Program (MAP) regarding the closure of Eastmont (Exhibit 10), and a bill draft LC2134 (Exhibit 11). She explained that a preamble was added to the bill draft with the items requested by the Subcommittee last week, and Section 4 now deals with the transfer of property. For the purposes of a placeholder in the bill, it will transfer the property to the Department of Corrections (DOC). If this needs to be amended later, the title is broad so that it can easily be done. It also states that wherever possible the Department will employ former employees of the Eastmont Center in new programs established at the facility. It provides for a transition period closing the facility to services by December 31, 2003, and transferring to DOC by that date.

EXHIBIT (jhh35a10)

EXHIBIT (jhh35a11)

{Tape: 3; Side: A; Approx. Time Counter: 15 - 23.5}

Ms. Gervais reviewed LC 2134 and said that legal staff instructed that they must respond by tomorrow.

SEN. STONINGTON said that she believes that they have a good discussion on this and that it is time to proceed. **CHAIRMAN CLARK** said that she had agreed to allow people from the Glendive community to come on Thursday to testify on the effect of closure on the community. **REP. JAYNE** commented on the whereas segment in the bill and remarked that given the whereas statements, she questions why they are closing the facility. It was agreed to resubmit the bill draft to legal staff.

{Tape: 3; Side: A; Approx. Time Counter: 23.5 - 31.5}

Ms. Gervais distributed and reviewed a spreadsheet with DSD decision packages.

EXHIBIT (jhh35a12)

In discussion of the decision packages, **SEN. COBB** suggested that they could take the general fund out of DPs 294 and 295 and replace it with federal funds. **Gail Briesse-Zimmer** said that if they were potentially to fully match all of the general fund

dollars they would need federal authority at the Federal Medicaid Assistance Percentages (FMAP) rate. **Ms. Gervais** said that they would reduce the general fund by \$1.4 million and \$189,000, and increase the federal matching funds at the FMAP rate, which is about \$3 dollars for each dollar. So, rather than \$1.4 million of federal funds, it would increase by about \$4 or \$5 million. **Ms. Gervais** suggested that they retitle the decision packages with a refinance type title. **REP. JAYNE** requested that those decision packages be in writing so that she can look at them.

{Tape: 3; Side: A; Approx. Time Counter: 31.5 - 49.5}

Moving on to the other DSD item remaining for discussion, the issue of whether or not the Subcommittee wishes to adopt eligibility criteria for application to the general fund portion of the program, **Ms. Gervais** referred to Exhibit 12, the Department proposal for eligibility requirements in DSD. She suggested that the Subcommittee may wish to require that individuals apply to Medicaid or CHIP prior to being eligible for general fund services since there is neither statutory provision nor administrative rule requiring this. She suggested that they could establish a maximum in statute and provide the Department with rule-making authority to adopt anything up to that level. The Subcommittee may wish to discuss the types of disregards or deductions and possible waivers for family resources in determining Medicaid eligibility for children. This is one program where family income and resources do not count towards the child's eligibility for Medicaid funding.

EXHIBIT (jhh35a13)

EXHIBIT (jhh35a14)

Ms. Steinbeck listed and reviewed options on the board: application requirement for Medicaid or Children's Health Insurance Program(CHIP); percentage of poverty; and Medicaid eligibility. No matter what the decision, the Department must be able to clearly articulate it.

{Tape: 3; Side: B; Approx. Time Counter: 1.1 - 2.5}

Responding to a query from **SEN. STONINGTON**, **Ms. Gervais** said that in her research it was difficult to ascertain whether there were significant general fund programs in this area in other states. **Director Gray** added that in a significant number of states, the school system provides these services beginning at birth. In Montana, this does not occur until age three. It is difficult to compare states because they provide services in different ways and by different agencies.

{Tape: 3; Side: B; Approx. Time Counter: 2.5 - 6.6}

Returning to her review of Subcommittee options, **Ms. Steinbeck** delineated their choices under the percentage of poverty: establish no percent of poverty; allow disregards if they do decide on a percentage of poverty; look solely at the child's resources; or establish a copayment. **Ms. Steinbeck** went over the "Family of One Rule," where the child is a family of one, which allows the waiver concept to work. For Medicaid eligibility, only the child's income and resources count. They would then be able to shift these individuals to Medicaid, which would almost eliminate the problem of percentage of poverty eligibility. The limit would then be a number of slots if it is a capped waiver, and those that are not served by the waiver are served under general fund.

{Tape: 3; Side: B; Approx. Time Counter: 6.8 - 10.3}

Director Gray expressed concern that there should be hearings for the public on the issue should the policy change. **Ms. Steinbeck** replied that if this were to become a bill, there would be at least two hearings at which the public could provide comment. Making reference to the Subcommittee's policy-making position, **Ms. Steinbeck** said that they should be discussing their priorities for the types of reductions that the Department should make. With reference to the percentage of poverty, she said that they need to come up with a rational basis as to why this disability should be treated differently than other disabilities.

{Tape: 3; Side: B; Approx. Time Counter: 10.3 - 11.1}

SEN. STONINGTON asked Wally Melcher, Montana Disabilities Association, what kind of impact there would be if they required all clients of Developmental Disabilities Services to apply for Medicaid and CHIP. **Mr. Melcher** said that he believes that the application process for both Medicaid and CHIP is a reasonable step to take. Some people for whatever reason, will choose to not do this, and if that is the case, then they can not apply to the program. It is not something that he would be against.

{Tape: 3; Side: B; Approx. Time Counter: 11.1 - 12.7}

SEN. STONINGTON next asked **Ms. Steinbeck** if they were to require this would it need to be a statutory change. **Ms. Steinbeck** said that it has not always been the practice of the Division to bill Medicaid for Medicaid-eligible services. The Department was able to refinance \$1.8 million in general fund by billing Medicaid. It is unclear whether people are routinely screened for Medicaid eligibility for the program before they are put on general fund services. One option for consideration could be a request that the legislative auditors pay particular attention to the application of that statute(17-7-208) in their review.

{Tape: 3; Side: B; Approx. Time Counter: 12.7 - 13.8}

SEN. STONINGTON asked the Department to respond to this. **Mr. Mathews** said that establishing someone on Medicaid does not automatically place that individual on the waiver. There are other criteria in the waiver. This is a capped waiver and DSD can be more aggressive if the legislature tells them that people must apply for Medicaid and CHIP. The big issue for DSD is how many people can then be placed on waiver.

{Tape: 3; Side: B; Approx. Time Counter: 13.8 - 16.4}

Ms. Gervais said that if the state has opted to not increase waiver slots, the policy issue becomes whether they wish to support individuals who are not on the waiver with general fund dollars. They need to determine whether they wish to have a general fund program which is that extensive for services in this delivery system.

{Tape: 3; Side: B; Approx. Time Counter: 16.4 - 18}

CHAIRMAN CLARK asked **Director Gray** what percentage of poverty could be used so that they would not have to have disregards. **Director Gray** said that it would be 400 percent. She added that they have applied for more waiver slots; they think they will get them, but do not have them, yet.

Ms. Gervais said that the true issue with respect to eligibility is the size and scope of the general fund program, and who the legislature wishes to support with general fund. She drew a comparison with Senior and Long Term Care (SLTC) and those in nursing homes where they do not use general fund to pay for nursing home care for residents who have outside property. Those individuals are required to liquidate their assets and pay for their own care until they become eligible for state reimbursement. In the instance of DSD services, a family or individual could own property which is not utilized to determine eligibility for services, and their services may be paid for from general fund. She added that statute does not have eligibility criteria for this program, and that the legislature could provide guidance in statute if they wished to do this. Responding to questions from **SEN. COBB**, she said that there is nothing in statute that requires a copayment nor is there anything that prohibits this. She said that she would need clarification of Department authority from legal staff on this.

Ms. Steinbeck said that the legislative delegation of a means test to the Department would be an unconstitutional delegation of legislative authority. If they are going to establish eligibility at a certain percentage of poverty, they would need to do it through statute and may wish to include disregards.

SEN. COBB said that he is afraid that the legislature will not go with such a bill since it is concerned only with the budget.

{Tape: 3; Side: B; Approx. Time Counter: 22.4 - 26}

Ms. Gervais said that this has been an expanding system, and they may wish to take this type of action to limit future growth of the program. **Director Gray** commented that one advantage to having a bill is that people would have the opportunity to have their say. If they say the Department can do this, it would have a hearing, but it would not have a way to change the amount of money or the allocation of it. The Subcommittee is the policy provider and can do this. She emphasized her concern regarding unintended consequences.

{Tape: 3; Side: B; Approx. Time Counter: 25 - 27.7}

Ms. Steinbeck stated that they could allow that services be general funded up to the level of appropriation, specify and line item this in the appropriations act, and tie it to the statute. They could tell the Department to base eligibility on the severity of disability within the general fund appropriation.

SEN. COBB said that the eligibility was going to happen sometime and asked Mr. Melcher if he knows whether other states have disregards, caps, copays, and so on. **Mr. Melcher** said that there is a cap on the program, in that there are no entitlements. The only entitled program in DD is the Part C Program, which is federally funded. The remaining programs are capped by the amount of money that the legislature appropriates, which may in some cases become a match for Medicaid or else fully funds the program.

{Tape: 3; Side: B; Approx. Time Counter: 27.7 - 36}

SEN. COBB next asked why the state is being sued if that is the case. **Mr. Melcher** explained that the Travis D Lawsuit stems from those in the institutions who do not meet the definition of seriously developmentally disabled; MAP is saying that those individuals need to be moved into the community. **SEN. COBB** then asked if they could protect themselves by saying that they can't have waiting lists, and **Mr. Melcher** said that the State could do this. **Ms. Steinbeck** inserted that the waiting list applies to individuals meeting the criteria for services, which is anyone born with a developmental delay that is likely to be present for life. **Ms. Gervais** added that in Wyoming in order to be eligible for services there must be an intelligence quotient(IQ) of 70 or below and an Inventory for Client Agency Planning (ICAP) assessment score of 70 or below. This has allowed Wyoming to not have a waiting list, although it is also acknowledged as having among the most restrictive criteria in the county.

{Tape: 3; Side: B; Approx. Time Counter: 36 - 48.9}

Mr. Mathews observed that those working in Developmental Disabilities have always considered it a capped waiver program. The legislature gives them so much money, they match it as well as they can, and serve as many people as they can. When the money runs out, they are done. The next person on the waiting list stays there until there is an opening. He expressed his concerns over the potential problem with Olmstead planning because they must be able to say that they will try to move people at a reasonable pace. There followed a lengthy discussion of the ramifications of Olmstead, the growth in the budget, the waiting list and eligibility.

Mr. Mathews commented that although the Department has never considered this an entitlement program, when the federal government examines the program it looks at what services the individual needs not what they want. **Ms. Gervais** said that if the federal government requires that DD fully fund necessary services for everyone on the waiver, it will lead to fewer individuals receiving services because the general fund supporting the waiver will not serve so many people.

{Tape: 4; Side: A; Approx. Time Counter: 0.3 - 8}

Ms. Steinbeck said that the LFD staff will write up some of these things for consideration. She and **Ms. Gervais** briefed the Subcommittee on the issues that they would be considering the next day.

ADJOURNMENT

Adjournment: 11:45 A.M.

REP. EDITH CLARK, Chairman

SYDNEY TABER, Secretary

EC/ST

EXHIBIT (jhh35aad)